

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

June 17, 2002

RESPONSIBLE STAFF:

Trudy Schwarz

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment/Reappointments
	Public Hearing
	Historic District
	Consent Item
	Ordinance
X	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

RESOLUTION authorizing the Mayor to sign and record in Codified Version a Corrected Copy of Ordinance O-2-00 to Conform to the Intent and Language in Text Amendment T-340.

SUPPORTING BACKGROUND:

Attached is a resolution to authorize Mayor Katz to sign a corrected version of Text Amendment T-340 adopted in February of 2000. Staff was reviewing the 2001 Printed version of the Zoning Ordinance and noticed that the first use permitted by right in the I-3 Zone was inadvertently omitted by mistake in Text Amendment T-340, O-2-00. This use states: "All uses permitted by right in the E-1 Zone" are permitted by right in the I-3 zone. (See attached 1998 and 2001 Zoning Ordinance pages and T-340.) Staff can only guess that the computer voluntarily renumbered the text amendment during the revision period and no one noticed the change in the number, since we were focusing on the language.

City Attorney Abrams opined that in order to correct this housekeeping mistake, a resolution must be adopted to authorize the Mayor to sign a corrected copy of the original ordinance. (See attached opinion.)

DESIRED OUTCOME:

Adopt Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF GAITHERSBURG AUTHORIZING THE
MAYOR TO SIGN AND RECORD IN CODIFIED VERSION
A CORRECTED COPY OF ORDINANCE NO. O-2-00 TO
CONFORM TO THE INTENT AND LANGUAGE
IN TEXT AMENDMENT T-340.

WHEREAS, prior to the adoption of Zoning Text Amendment T-340, amending the uses permitted by right in the I-3 Zone (§24-143) the I-3 Zone permitted "All uses permitted by right in the E-1 Zone; and

WHEREAS, Zoning Text Amendment T-340, as introduced, advertized, subject to public hearing and subsequently adopted on February 7, 2000 as Ordinance O-2-00 was solely enacted for the purpose of establishing development standards for public buildings and uses in the I-3 Zone, a use permitted by right in the E-1 Zone; and

WHEREAS, through a drafting and codification error, §24-143(l) allowing "All uses permitted by right in the E-1 Zone" was inadvertently deleted from the City Zoning Ordinance §24-143, Chapter 24 of the Gaithersburg City Code and the City Council of Gaithersburg desires this enactment and codification error to be corrected.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Gaithersburg that the Mayor be and is hereby authorized to execute a corrected version of Text Amendment T-340, being Ordinance No. O-2-00 to reflect that §24-143(l) of the City Zoning Ordinance should state "All uses permitted by right in the E-1 Zone" and §24-143(2) shall state "Public buildings and uses subject to the following requirements:

- (a) The minimum lot or parcel area shall be at least twenty (20) acres in size.
- (b) No on-site parking or storage of trucks, either within a building or on the exterior, or motor vehicles other than automobiles for employees and customers of the facility are allowed.
- (c) All parking areas shall be set back at least fifty (50) feet from any common property line or public right of way and shall be screened by fencing or planting at least four (4) feet in height.
- (d) No distribution uses are allowed. For the purpose of this section "distribution uses" is defined as the primary use of the property for the collection and transfer or dispensing of personal property or equipment to public or private recipients.

BE IT FURTHER RESOLVED, that the City Manager shall undertake corrections in the codification of the City Zoning Ordinance to reflect the contents of this action.

ADOPTED by the Mayor and City Council of Gaithersburg, Maryland on this
_____ day of _____, 2002.

SIDNEY A. KATZ, MAYOR
City of Gaithersburg

THIS IS TO CERTIFY that the
foregoing Resolution was adopted
by the City Council in public meeting
assembled on the _____ day of
_____, 2002.

David B. Humpton, City Manager

Sec. 24-141A. Frontage and access requirements.

Buildings constructed on I-1 zoned land containing an aggregate gross floor area of twenty thousand (20,000) square feet or more shall be located on a lot having not less than seventy-five (75) feet of frontage upon an improved public roadway and direct access to that roadway.
(Ord. No. 0-22-87, 9-8-87)

Sec. 24-141B. Open storage restrictions.

The open storage in any yard area of goods, materials or equipment for sale or lease off-site shall be upon areas designated in an approved site plan and shall be enclosed by a sight-tight fence or planted material not less than six (6) feet in height.
(Ord. No. 0-22-87, 9-8-87)

DIVISION 15. I-3 ZONE, INDUSTRIAL AND OFFICE PARK**Sec. 24-142. Purpose of zone.**

The purpose of the I-3 Zone is to provide for parklike development of industries or offices that are relatively nuisance-free. Uses permitted in this zone are provided a healthful operating environment secure from the encroachment of commercial or residential uses, and protected from adverse effects of incompatible industries. The regulations in this zone will reduce the impact of employment centers on surrounding uses by lessening traffic congestion, protecting the health and safety of workers and residents nearby, and by preventing detrimental effects on properties adjoining or in the neighborhood.
(Ord. No. 0-2-65, Art. 3, § 1)

Sec. 24-143. Uses permitted by right.

The following uses are permitted by right in the I-3 Zone:

- ➔ (1) All uses permitted by right in the E-1 Zone.
- (2) Public buildings and uses.
- (3) Office buildings for professional and general business offices.
- (4) Restaurants (Class A when located within the same building which is substantially devoted to a recreational use and Class C).
- (5) Hospitals and associated medical facilities such as, but not limited to, medical laboratories, medical schools and convalescent homes.
- (6) Child or elderly day care facilities accommodating not more than eight (8) individuals.
- (7) Child or elderly day care facilities accommodating more than eight (8) individuals subject to restrictions on such use contained in section 24-25(4) and the following requirements:
- a. Such use within a building or structure shall be constructed and maintained with noise attenuation materials so not to emit noises in excess of a sixty-five (65) dba level into adjoining uses, common areas or public ways;

DIVISION 15. I-3 ZONE, INDUSTRIAL AND OFFICE PARK

Sec. 24-142. Purpose of zone.

The purpose of the I-3 Zone is to provide for parklike development of industries or offices that are relatively nuisance-free. Uses permitted in this zone are provided a healthful operating environment secure from the encroachment of commercial or residential uses, and protected from adverse effects of incompatible industries. The regulations in this zone will reduce the impact of employment centers on surrounding uses by lessening traffic congestion, protecting the health and safety of workers and residents nearby, and by preventing detrimental effects on properties adjoining or in the neighborhood.
(Ord. No. O-2-65, Art. 3, § 1)

Sec. 24-143. Uses permitted by right.

The following uses are permitted by right in the I-3 Zone:

➔ (1) Public buildings and uses subject to the following requirements:

- (a) The minimum lot or parcel area shall be at least twenty (20) acres in size.
- (b) No on-site parking or storage of trucks, either within a building or on the exterior, or motor vehicles other than automobiles for employees and customers of the facility are allowed.
- (c) All parking areas shall be set back at least fifty (50) feet from any common property line or public right-of-way and shall be screened by fencing or planting at least four (4) feet in height.
- (d) No distribution uses are allowed. For the purpose of this section "distribution uses" is defined as the primary use of the property for the collection and transfer or dispensing of personal property or equipment to public or private recipients.

➔ (2) Public buildings and uses.

- (3) Office buildings for professional and general business offices.
- (4) Restaurants (Class A when located within the same building which is substantially devoted to a recreational use and Class C).
- (5) Hospitals and associated medical facilities such as, but not limited to, medical laboratories, medical schools and convalescent homes.
- (6) Child or elderly day care facilities accommodating not more than eight (8) individuals.
- (7) Child or elderly day care facilities accommodating more than eight (8) individuals subject to restrictions on such use contained in section 24-25(4) and the following requirements:
 - a. Such use within a building or structure shall be constructed and maintained with noise attenuation materials so not to emit noises in excess of a sixty-five (65) dba level into adjoining uses, common areas or public ways;

gr

ORDINANCE NO. 0-2-00

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE
(CITY ZONING ORDINANCE), ARTICLE III, DIVISION 15,
ENTITLED , "I-3 ZONE, INDUSTRIAL AND OFFICE PARK,"
SECTION 24-143, ENTITLED, "USES PERMITTED BY RIGHT,"
SO AS TO PROVIDE CERTAIN DEVELOPMENT STANDARDS
FOR PUBLIC BUILDINGS AND USES.

Text Amendment No. T-340

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in
public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance),
Article III, Division 15, Section 24-143, is hereby amended to read as follows:

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

* * *

DIVISION 15. I-3 ZONE, INDUSTRIAL AND OFFICE PARK

* * *

Sec. 24-143. Uses permitted by right.

The following uses are permitted by right in the I-3 Zone:

* * *

Should have
been
(2)

→

(1) Public buildings and uses [•] subject to the following requirements:

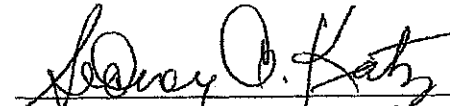
(a) The minimum lot or parcel area shall be at least twenty (20) acres
in size.

(b) No on-site parking or storage of trucks, either within a building or
on the exterior, or motor vehicles other than automobiles for employees and customers
of the facility are allowed.

(c) All parking areas shall be set back at least fifty (50) feet from any
common property line or public right of way and shall be screened by fencing or
planting at least four (4) feet in height.

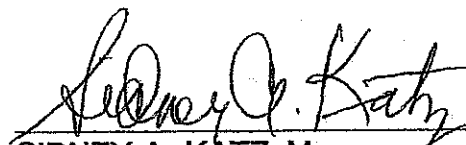
(d) No distribution uses are allowed. For the purpose of this section "distribution uses" is defined as the primary use of the property for the collection and transfer or dispensing of personal property or equipment to public or private recipients.

ADOPTED this 7th day of February, 2000 by the City Council of Gaithersburg, Maryland.



Sidney A. Katz, Mayor and
President of the Council

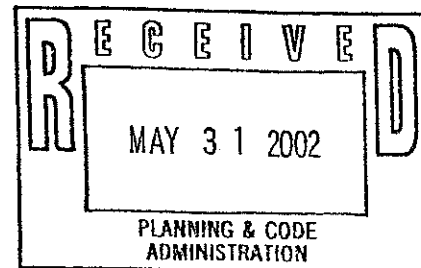
DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 7th day of February 2000. APPROVED by the Mayor of the City of Gaithersburg, this 7th day of February 2000.



SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 7th day of February 2000, and that the same was approved by the Mayor of the City of Gaithersburg on the 7th day of February 2000. This Ordinance will become effective on the 29th day of February 2000.

David B. Humpton, City Manager



MEMORANDUM

TO: Jennifer Russel, Director of Planning & Code

FROM: Stanley D. Abrams, City Attorney

SUBJECT: T-340 Amendment to I-3 Zone

DATE: May 29, 2002

I have reviewed my files on Text Amendment T-340 (now codified as Ordinance 0-2-00) to determine what happened with respect to the language "All uses permitted by right in the E-1 Zone" which was contained within subsection (1) of §24-143 of the Zoning Ordinance prior to adoption of T-340 and what happened as a result of the adoption of that text amendment which apparently deleted this language.

First of all it is clear that the intent of T-340 was only to add regulations and requirements as to "Public buildings and uses" and was not intended to eliminate in the I-3 Zone all uses permitted by right in the E-1 Zone contained within subsection (1) of §24-143. This is apparent from the following:

- (1) The amendment was meant to address the City's concerns about placing a U.S. Postal Service facility on the former National Geographic property.
- (2) The Title of the ordinance amendment as introduced, advertised and subject to public hearing specified the Ordinance as "to provide certain development standards for public buildings and uses" and did not mention the elimination of permitted uses in the I-3 Zone.
- (3) The staff memo of November 15, 1999 reiterates the purpose and intent of the text amendment as follows:

"This is a "housekeeping" text amendment which will strengthen the requirements for locating public uses in the City's I-3 Zone."

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@ci.gaithersburg.md.us • www.ci.gaithersburg.md.us

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Ann T. Somerset

CITY MANAGER
David B. Humpton

- (4) The ordinance as originally drafted, advertised and subject to public hearing and as adopted contained asterisk (*) symbols below the text of Section 24-143 which states "The following uses are permitted by right in the I-3 Zone." In legislative drafting the asterisk symbol means language in a law or ordinance which is not repeated in the amendment but is to be retained. The asterisk referred to the language immediately following the phrase "the following uses are permitted by right in the I-3 Zone:" That language (intended to be retained) was "(1) all uses permitted by right in the I-3 Zone." That version of the amendment erroneously numbered the subsection (1) when it should have referred to subsection (2) which at that time related to "public buildings and uses". The asterisks are in the signed adopted version of the ordinance, but for some unexplained reason were ignored in the printing of the City Zoning Ordinance and the phrase permitting all uses by right in the E-1 Zone, disappeared from the zoning ordinance text of §24-143 when it should have been retained.

Under these circumstances, the adopted version (and printed version in the City Code of Ordinance 0-2-00 of T-340) did not repeal expressly or by implication the permitted use of "All uses permitted by right in the I-3 Zone formerly contained in §24-143. 6, McQuillin Municipal Corporations, §21.19 (3d Ed.). This error and omission can be corrected by resolution of the City Council directing the Mayor to sign a corrected copy of the Ordinance and re-recording it. 5, McQuillan Municipal Corporations, §16.93 (3d Ed.).